

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-783
)	
Union Broadcasting, Inc.)	NAL/Acct. No.200332560010
Licensee of:)	
AM Broadcast Station WHB)	FRN 0005-0276-02
AM Broadcast Station KCTE)	
Overland Park, Kansas)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 18, 2003

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Union Broadcasting, Inc. ("Union"), licensee of AM Broadcast station KCTE, Independence, Missouri and AM Broadcast station WHB, Kansas City, Missouri, apparently liable for a forfeiture in the amount of eighteen thousand dollars (\$18,000) for willful and repeated violation of the terms of the KCTE station authorization and Sections 73.1745(a) and 73.3526(c) of the Commission's Rules ("Rules").¹ Specifically, we find Union Broadcasting, Inc. apparently liable for operation with modes and during hours not specified in the KCTE station authorization and for failure to make the public inspection file available to the public and to the FCC.

II. BACKGROUND

2. On October 7, 1999, the FCC, Kansas City Office issued a Notice of Violation ("NOV") to Union Broadcasting, Inc. for violation of 47 C.F.R. §73.1745. Specifically, station KCTE operated with modes and hours of operation not specified by the KCTE station authorization.

3. On November 14, 2002, the FCC, Kansas City Office received a complaint from a private citizen living in Independence, Missouri. The complaint specified that station KCTE frequently remained on the air at night with a carrier which interfered with the complainants' ability to receive adjacent channel AM stations. The complainant later stated in a telephone interview that he had complained directly to KCTE regarding the nighttime operation but had received a "runaround."

4. During the period of November 14-17, 2002, the FCC, Kansas City Office monitored KCTE, 1510 kHz in the Independence, Missouri area. This monitoring revealed that even though KCTE discontinued programming at approximately 5 p.m. and stopped transmitting, shortly after 5 p.m. on November 14, and November 15, 2002, the transmitter again came on the air at a reduced signal level and

¹ 47 C.F.R. §§ 73.1745(a) and 73.3526(c).

radiated without programming throughout the night. On the night of November 16, 2002, transmission stopped at approximately 5 p.m and remained off that night.

5. On November 19, 2002, an Agent with FCC, Kansas City Office, spoke with the person who filed the complaint and they confirmed that the station was off the air the night of November 16, 2002, but indicated the station was back on the air the night of November 18, 2002.

6. On November 20, 2002, an Agent with FCC, Kansas City Office, inspected radio stations KCTE and WHB at the main studio location for both stations at 6721 W. 121st St., Overland Park, Kansas. This inspection noted several violations including:

- a. The public inspection file for both WHB and KCTE was not available to the public or to the FCC agent at the time of inspection. It was locked in the office of a station employee who was not present at the station at that time. According to the station manager, the normal business hours for the main studio are 8:00 a.m. to 5:30 p.m., Monday through Friday. The inspection occurred on a Wednesday beginning at approximately 9:10 a.m. and ending at approximately 11:40 a.m. At no time during this period was the public file available for inspection.
- b. Concerning the transmitter operation at night by KCTE, the station manager stated he did not know if, or how, or when, transmitter readings were being taken on station KCTE. No operator was monitoring the power or directional parameters, no automated equipment was monitoring the KCTE transmitter, and no logs were being kept of transmitter readings. The last employee known to check on the transmitter was the contract engineer, Ed Treese, who stated he had not been to the transmitter site for the two week period prior to FCC inspection, and then during daytime hours only. During inspection at the transmitter site, the engineer indicated that power variations had previously caused problems with the timer associated with the automatic switching device utilized to turn the transmitter on and off. According to the station engineer, the automatic switching device was supposed to turn the transmitter on and place it at 500 watts for pre-sunrise operation at 6:45 a.m., then increase power to 10kW at 7:30 a.m. for full daytime power, then turn the transmitter off at 5:00 p.m.

III. DISCUSSION

7. The KCTE station authorization specifies daytime operation only. Nighttime operation is not authorized. For the month of November, the authorized sunrise time for the KCTE transmitter location is 7:00 a.m. (CST) and the sunset time is 5:00 p.m. (CST). Section 73.99 authorizes pre-sunrise operation beginning no earlier than 6:00 a.m. The licensee was not utilizing post-sunset operation according to the station manager. Section 73.1745(a) specifies that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided. On November 14, 2002, station KCTE transmitted on the frequency 1510 kHz during the period of 6:00 p.m. to midnight. On November 15, 2002, KCTE transmitted on the frequency of 1510 kHz during the periods of midnight to 6:00 a.m. and from 6:00 p.m. to midnight. On November 16, 2002, station KCTE transmitted on 1510 kHz from midnight to 6:00 a.m. Each listed period of operation is in violation of this section and

the terms of the KCTE station authorization.

8. The violation of 73.1745(a) is a repeat violation. The licensee was issued an NOV dated October 7, 1999 for operation on 10 separate dates with broadcast times not authorized by the rules or the KCTE station authorization. The latest KCTE license renewal was issued on July 27, 1998 with an expiration of February 1, 2005. Therefore, the violations noted in October, 1999 and in November, 2002 occurred during the same license period.

9. Section 73.3526(c) requires the public inspection file be available for public inspection at any time during regular business hours. On November 20, 2002, the public inspection files for both KCTE and WHB were locked in the office of a station employee and not made available for inspection upon request by an FCC inspector. The file remained locked during the two hour inspection, which occurred on a Wednesday during regular business hours. The file was not available to the public or the FCC.

10. Based on the evidence before us, we find Union willfully² and repeatedly³ violated the terms of the KCTE station authorization and Sections 73.1745(a) and 73.3526(c) of the Rules by operating on November 14, 15 & 16, 2002 with power and at times of operation not authorized by the KCTE station authorization, and by failing to make the public inspection files of both KCTE and WHB available to the public and the FCC.

11. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for unauthorized emissions is \$4,000 and for public file violations the base forfeiture is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Union’s unauthorized operation of the KCTE transmitter is repeated. The FCC notified Union of fifteen instances of the same type of violation in 1999. Therefore, an upwards adjustment of the base forfeiture for unauthorized emissions from \$4,000 to \$8,000 is justified. Considering the entire record and applying the factors listed above, this case warrants an \$18,000 forfeiture (\$8,000 for unauthorized emissions and \$10,000 for the public file violation).

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

0.111, 0.311 and 1.80 of the Rules,⁷ Union Broadcasting, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eighteen thousand dollars (\$18,000.00) for willful and repeated violation of Sections 73.1745(a) and 73.3526(c) of the Rules by operating station KCTE at times and with power not authorized by the KCTE station authorization, and by failing to make the public inspection file for stations KCTE and WHB available to the public and the FCC.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Union Broadcasting, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

15. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your

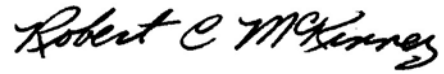
⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁸ See 47 C.F.R. § 1.1914.

response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Union Broadcasting, Inc., 6721 W. 121st St., Overland Park, KS 66209.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Robert C. McKinney". The signature is written in a cursive, flowing style.

Robert C. McKinney
Kansas City Office, Enforcement Bureau

Attachment

ATTACHMENT A

FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

International Services	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHZ Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	

Air-Ground Radiotelephone Service	1,500 Employees or Fewer
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less

24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	<p>Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)</p> <p>Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)</p>
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)